IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 16819 of 2004

Date of Decision : 09.10.2006

Rattan Lal .... Petitioner

Versus

State of Punjab and others. ... Respondents.

CORAM : Hon'ble Mr. Justice J.S. Khehar,
Hon'ble Mr. Justice S.D. Anand.

Present : Mr. Harsh Kinra, Advocate,
for the petitioner.

Mr. Ashok Aggarwal, Addl. Advocate General, Punjab
for the respondents.

J.S.Khehar, J.(Oral)

The petitioner was inducted into the service of the respondents as a Clerk in 1975. He came to be promoted as a Labour Inspector Grade I in 1993. While he was holding the post of Labour Inspector Grade I, First Information Report bearing No. 184 was registered against the petitioner on 30.11.1993, under Sections 7 and 13 of the Prevention of Corruption Act, 1988, at Police Station Division No.4, Jalandhar. It is not a matter of dispute, that in furtherance of the trial conducted against the petitioner, he was convicted and sentenced to imprisonment for a period of two years besides, fine of Rs.5000/- and in default thereof, further imprisonment for a period of six months, by the Special Judge, Jalandhar, vide his judgment/order dated 12/13.3.1997, directing, that the sentence passed against the petitioner would remain suspended till 3.4.1997, so as to enable

the petitioner to seek an appropriate redresssal against the order of his conviction.

The petitioner preferred Criminal Appeal No. 227-SB of 1997 against the judgment/order dated 12/13.3.1997 to impugn his conviction and sentence at the hands of the Special Judge, Jalandhar. While admitting the appeal preferred by the petitioner, this Court by an order dated 31.3.1997 ordered the suspension of the petitioner's conviction, as well as, the sentence imposed upon him.

The question which arose for consideration at the hands of the authorities was, whether action could be taken against him on the basis of his conviction at the hands of Special Judge, Jalandhar. Accordingly, a notice was served on the petitioner dated 12.09.2003 by the punishing authority, requiring him to show cause why he should not be removed from service, on the basis of his conviction by the Special Judge, Jalandhar. The petitioner submitted his reply thereto. Additionally, he was afforded an opportunity of hearing on 3.12.2003. The punishing authority at that juncture decided to keep the case of the petitioner pending. In other words, it was decided not to take any action against the petitioner on the basis of conviction at the hands of the Special Judge, Jalandhar, till the final decision in the matter by this Court, i.e., a final decision in Criminal Appeal No. 227-SB of 1997. The aforesaid determination at the hands of the punishing authority was communicated to the petitioner vide a memorandum dated 3.12.2003.

The successor of the punishing authority was, however, of the view, that it would not be advisable to retain the petitioner in service on account of his conviction at the hands of the Special Judge, Jalandhar in furtherance of FIR No. 184 dated 30.11.1993, at Police Station Division

No.4, Jalandhar. The successor in office, therefore, decided to rectify the decision taken by his predecessor (which was communicated to the petitioner vide memorandum dated 3.12.2003) and while doing so decided to dismiss the petitioner from service. The aforesaid determination was rendered by order dated 14.10.2004. It is this order passed by the Principal Secretary to Government Punjab, Department of Labour and Employment dated 14.10.2004, which is subject matter of challenge at the hands of the petitioner through the instant writ petition.

The solitary contention of the learned counsel for the petitioner is, that an order in the nature of one in hand can only be passed on the conviction of an employee at the hands of Criminal Court. Although it is acknowledged, that the petitioner was convicted and sentenced by the Special Judge, Jalandhar on 13.3.1997, in furtherance of First Information Report No. 184 dated 30.11.1993, registered at Police Station Division No.4, Jalandhar, yet it is submitted, that the aforesaid conviction having been suspended must be deemed to be not in existence at the present juncture so as to enable the competent authority to pass an order under the provisions of Rule 13(1) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970. In this behalf, it is pointed out that the aforesaid rule can only be invoked while an order of conviction is subsisting.

Mr. Ashok Aggarwal, Additional Advocate General, Punjab, has refuted the contention of the learned counsel for the petitioner by relying on the decision rendered by the Apex Court in Deputy Director of Collegiate Education (Administration), Madras versus S. Nagoor Meera, 1995(3) Recent Services Judgements, 299, and pointedly invited the attention of this Court to paragraphs 7 and 10 of the said judgment, which are being extracted

here under:-

> "7. This clause, it is relevant to notice, speaks of "conduct which had led his conviction on a criminal charge". It does not speak of sentence or punishment awarded. Merely because the sentence is suspended and/or the accused is released on bail, the conviction does not cease to be operative. Section 389 of the Code of Criminal Procedure, 1973 empowers the appellate Court to order that pending the appeal "the execution of the sentence or order appealed against be suspended and, also, if he is in confinement that he be released on bail, or on his own bond" Section 389(1), it may be noted, speaks of suspending "the execution of the sentence or order", it does not expressly speak of suspension of conviction. Even so, it may be possible to say that in certain situations, the appellate Court may also have the power to suspend the conviction – an aspect dealt with recently in Rama Narang Vs. Ramesh Narang, JT (1995) 1 SC 515. At pages 524 and 525, the position under Section 389 is stated thus: (SCC pp. 524-525, paras 15 and 16).
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> > "Section 389(1) empowers the Appellate Court to order that the execution of the sentence or order appealed against be suspended pending the appeal. What can be suspended under this provision is the execution of the sentence or the execution of the order. Does `order' in Section 389(1) mean order of conviction or an order similar to the one under Section 357 or Section 360 of the Code? Obviously the order referred to in Section 389(1) must be an order capable of execution an order of conviction by itself is not capable of execution under the

Code. It is the order of sentence or an order awarding compensation or imposing fine or release on probation which are capable of execution and which, if not suspended, would be required to be executed by the authorities.

* * *

In certain situations the order of conviction can be executable, in the sense, it may incur a disqualification as in the instant case. In such a case the power under Section 389(1) of the Code could be invoked. In such situations the attention of the Appellate Court must be specifically invited to the consequence that is likely to fall to enable it to apply its mind to the issue since under Section 389(1) it is under an obligation to support its order `for reasons to be recorded by it in writing'. If the attention of the Court is not invited to this specific consequence which is likely to fall upon conviction how can it be expected to assign reasons relevant thereto?... If such a precise request was made to the Court pointing out the consequences, likely to fall on the continuance of the conviction order, the Court would have applied its mind to the specific question and if it thought that case was made out for grant of interim stay of the conviction order, with or without conditions attached thereto, it may have granted an order to that effect".

10. What is really relevant thus is the conduct of the government servant which has led to his conviction on a criminal charge. Now, in this case, the respondent has been found guilty of corruption by a criminal Court. Until the said conviction is set aside by the appellate

or other higher Court, it may not be advisable to retain such person in service. As stated above, if he succeeds in appeal or other proceeding, the matter can always be reviewed in such a manner that he suffers no prejudice."

Having heard learned counsel for the rival parties, we are of the view, that the claim of the petitioner is liable to be accepted for a variety of reasons. Firstly, the judgment relied upon by the learned counsel for the respondents cannot be treated as a ratio insofar as the present controversy is concerned, on account of the fact that in the determination rendered by the Apex Court in Deputy Director of Collegiate Education (Administration), Madras's case (supra), only the sentence imposed against the concerned employee had been suspended and not his conviction. Whereas, it would be pertinent to mention, that this Court, while entertaining Criminal Appeal No. 227-SB of 1997, had expressly suspended the order of conviction as well.

Secondly, it could not be refuted by the learned counsel for the respondents, that at the present juncture, the petitioner cannot be deemed to be suffering an order of conviction on account of the express order passed by this Court on 31.3.1997, by which the conviction of the petitioner has been suspended.

Thirdly, it would be pertinent to mention that while relying upon the judgment rendered by the Apex Court referred to above, learned counsel for the respondents emphatically asserted, that it was for the petitioner to bring to the notice of this Court, consequences of the suspension of his conviction, and that since the petitioner had not brought to the notice of this Court, the fact that it would have a bearing on his continuation in service, the said order by which this Court had suspended the

order of conviction of the petitioner, the same could not be extended to the consequential effect in the course of his civil employment. It is not possible for us to accept the instant submission of the learned counsel for the respondents. It is for the respondents to have brought to the notice of this Court, or to have taken further action open to the respondents, in accordance with the law, by contesting the order by which this Court had suspended the conviction of the petitioner, by highlighting the consequences thereof. Despite the filing of the instant writ petition at the hands of the petitioner, no such recourse was taken at the hands of the respondents. Since the sum and substance of the order passed by this Court on 31.3.1997, suspending the conviction of the petitioner, is in operation, the petitioner cannot be deemed to have been convicted, so as to take further consequential action against him. It is, therefore, not possible for us to accept the instant plea of the learned counsel for the respondents, that till the conviction of the petitioner is set aside, it is open to the respondents to take action against him despite the suspension of the order of conviction by this Court. Acceptance of the aforesaid plea at the hands of the respondents would negate the effect of the order passed on 31.3.1997, suspending the conviction of the petitioner.

Fourthly, it would be pertinent to mention, that the petitioner was informed by a memorandum dated 3.12.2003, that further action contemplated against him under the provisions of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 was being kept in abeyance. Before a review of the aforesaid order, it was imperative for the respondents to afford an opportunity of hearing to the petitioner. No such opportunity of hearing was afforded to the petitioner at the hands of the respondents before the impugned order dated 14.10.2004 came to be passed. The authorities having

communicated to the petitioner the memorandum dated 3.12.2003, could have taken a decision to the contrary only after following the rules of natural justice.

For the reasons recorded herein above, we are satisfied, that the impugned order dated 14.10.2004 (Annexure P/9) deserves to be set aside. The same is accordingly, set aside.

Allowed in the aforesaid terms.

(J.S. Khehar)
Judge

October 09, 2006
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(S.D. Anand)
Judge